

SUBCHAPTER H—[RESERVED]
SUBCHAPTER I—TUNA FISHERIES

**PART 285—ATLANTIC TUNA
FISHERIES**

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FIGURE 1 TO PART 285

AUTHORITY: 16 U.S.C. 971 *et seq.*

SOURCE: 50 FR 43398, Oct. 25, 1985, unless
otherwise noted.

Subpart A—General

§ 285.1 Purpose and scope.

(a) The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971-971h) authorizes the Secretary to implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Secretary's authority under the Act has been delegated to the Assistant Administrator.

(b) This part implements the ICCAT recommendations for persons and vessels subject to the jurisdiction of the United States.

(c) This part does not apply to any person or vessel authorized by the Commission, or in writing by the Director, or any state upon written authorization by the Director, to engage in fishing for research purposes.

(d) Under section 9(d) of the Act, determinations made by the Assistant Administrator that the provisions of this part apply within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Texas, Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Rhode Island, Massachusetts, New

Hampshire, and the Commonwealths of Puerto Rico and the Virgin Islands, and, with the exceptions of §§ 285.22 (c) and (d), 285.23 (a) and (b) and 285.25 within the territorial sea of the United States adjacent to, and within the boundaries of, the State of Maine, continue in effect.

[50 FR 43398, Oct. 25, 1985, as amended at 60 FR 38511, July 27, 1995]

§ 285.2 Definitions.

The terms used in this part have the following meanings (definitions in the Act are repeated here to aid understanding of the rules):

Act means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h.

Aircraft means any contrivance used for flight in air.

Albacore means the fish species *Thunnus alalunga*.

Angling means fishing for or catching of, or the attempted fishing for or catching of, fish by any person (angler) with a hook attached to a line which is hand held or by rod and reel made for this purpose.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean. Size classes for Atlantic bluefin tuna are defined in § 285.26.

Atlantic bonito means the fish species *Sarda chiliensis* or *Sarda sarda*.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or fisheries enforcement officer of NMFS; or

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act.

Bandit gear means vertical hook-and-line gear with rods attached to a vessel, with no more than two hooks per

line and with line retrieved by manual, electric, or hydraulic reels.

Bigeye tuna means the fish species *Thunnus obesus*.

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

Buy-boat means any vessel or other means of conveyance used by a dealer in purchasing or receiving Atlantic bluefin tuna from any person or fishing vessel engaged in fishing for any tuna.

Cargo vessel means any fishing vessel used for transporting fish or fish products.

Charter boat means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year.

Commercial activity means any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species and activities conducted for the purpose of facilitating such buying and selling.

Commercial fishing means fishing for purposes including sale or barter of any or all of the fish harvested.

Commission means the International Commission for the Conservation of Atlantic Tunas established under Article III of the Convention.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Curved fork length means a measurement of the length of Atlantic tuna taken in a line tracing the contour of the body from the tip of the upper jaw to the fork of the tail, which abuts the ventral side of the pectoral fin and the ventral side of the caudal keel.

Dealer means any person who engages in a commercial activity with respect to a regulated species or parts thereof.

Director means the Director of the Office of Fisheries Conservation and Management, 1335 East-West Highway, Silver Spring, MD 20910.

Downrigger means a rod attached to a vessel and with a weight on a cable

that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling, and that has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line.

Dressed weight means the weight of a fish after it has been gilled, gutted, beheaded, and defined.

Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

Eviscerated means removal of the alimentary organs only.

Fish or *fishing* means the catching or fishing for, or the attempted catching or fishing for, any species of fish covered by the Convention, or any activities in support of fishing.

Fisheries Science Center Director means:

(1) For areas south of Virginia, the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761, or a designee; or

(2) For Virginia and areas to the north, the Science and Research Director, Northeast Fisheries Science Center, NMFS, 166 Water Street, Woods Hole, MA 02543-1097, telephone 508-548-5123.

Fishing record means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale.

Fishing trip means the time period between when a fishing vessel departs from port to carry out fishing operations and the time such vessel returns to port or offloads any of its catch.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing week means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time on the following Saturday.

Fixed gear means stationary, anchored non-trawl gear.

Handgear means handline, harpoon, or rod and reel.

Handline or *handline gear* means fishing gear which is released by hand and consists of one main line of variable length to which is attached one or two leaders and hooks. Handlines are retrieved only by hand, and not by mechanical means.

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floatation device. Harpoon gear is attached to a pole or stick which is propelled only by hand, and not by mechanical means.

Headboat (partyboat) means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

Intermediate country means a country from which bluefin tuna or bluefin tuna products that were previously imported by that nation are exported to the United States. Shipments of bluefin tuna or bluefin tuna products through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

Length overall means the length listed on the vessel's U.S. Coast Guard Certificate of Documentation or Certificate of Number, or if not documented, on the vessel's state registration certificate.

Longline or *longline gear* means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or groundline with three or more gangions and hooks. A longline may be retrieved by hand or mechanical means.

Metric ton (mt) means 2204.6 pounds (1000 kilograms).

NMFS means the National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

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Owner means, with respect to any vessel

(1) Any person who owns that vessel in whole or part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage; or

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

Person means any individual, partnership, corporation, or association subject to the jurisdiction of the United States.

Plastic tag means the plastic or combination plastic and metal marker issued for the tag and release program under § 285.27

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt or a receipt issued upon hand delivery to an authorized representative of NMFS.

Private boat means any vessel fishing in the Angling category other than charter or party boats.

Purse seining means fishing for or catching a regulated species by means of an encircling net and associated gear.

Recreational fishing means fishing for purposes not including sale or barter of any or all of the fish harvested.

Regional Director means

(1) For the purposes of Atlantic tuna vessel and dealer permits and Atlantic bluefin tuna dealer reports, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and for purposes of reporting for Atlantic tunas other than bluefin, the Regional Director, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

(2) For the purposes of Pacific bluefin dealer permits and reporting, the Director, Southwest Region, National

Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Regulated species means albacore, Atlantic bluefin tuna, bigeye tuna, skipjack tuna, or yellowfin tuna.

Regulatory area means all waters of the Atlantic Ocean including adjacent seas, except the waters over which the individual States exercise fishery management jurisdiction unless the Assistant Administrator has determined otherwise in accordance with this part, as noted in § 285.1(d).

Reporting week means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time the following Saturday.

Restricted-fishing day means a date, beginning at 0001 hours and ending at 2400 hours, after the commencement date of the General category fishing season and before the effective date of fishery closure on attaining the annual or subperiod quota, designated by the Director under § 285.24(a) upon which no fishing for, possession or retention of Atlantic bluefin tuna may be conducted by persons aboard vessels permitted in the Atlantic tunas General category.

Rod and reel means vertical hook-and-line gear with a hand-held (includes rod holder) fishing rod and with a manually operated reel attached.

Round or round weight means a fish or the weight of a fish before gilling, gutting, beheading, and definning.

Secretary means the Secretary of Commerce, or a designee.

Short ton (st) means 2,000 pounds (907 kilograms).

Skipjack tuna means the fish species *Katsuwonus (Euthynnus) pelamis*.

State means any State of the United States, the District of Columbia, the Commonwealths of Puerto Rico and the Virgin Islands, and territories and possessions of the United States.

Straight fork length means a measurement of the length of Atlantic tuna taken in a straight line along the middle of the lateral surface from a line perpendicular to the tip of the upper jaw to a line perpendicular to the fork of the tail.

Tag means the flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna under § 285.30.

Trap means a pound net, weir or staked gill net that is maintained and operated at a fixed location.

Tuna means albacore, Atlantic bluefin tuna, Atlantic bonito, bigeye tuna, skipjack tuna or yellowfin tuna.

Yellowfin tuna means the fish species *Thunnus albacares*.

[50 FR 43398, Oct. 25, 1985, as amended at 51 FR 26899, July 28, 1986; 52 FR 25011, July 2, 1987; 53 FR 24645, June 29, 1988; 57 FR 372, Jan. 6, 1992; 57 FR 32920, July 24, 1992; 58 FR 45289, Aug. 27, 1993; 59 FR 17725, Apr. 14, 1994; 60 FR 14386, Mar. 17, 1995; 60 FR 38511, July 27, 1995; 61 FR 30186, June 14, 1996; 62 FR 30744, June 5, 1997; 62 FR 38487, July 18, 1997]

§ 285.3 Prohibitions.

It is unlawful:

(a) For any person in charge of a fishing vessel or for any fishing vessel subject to the jurisdiction of the United States to engage in fishing or to land any tuna in violation of these rules.

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

(c) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish reports required by this part.

(d) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to obstruct or to refuse to allow any authorized officer to enter the dealer's premises or to board the fishing vessel to search or inspect its catch, equipment, books, documents, records, or other articles, or to question the persons in the dealer's premises or aboard the fishing vessel under the provisions of this part.

(e) For any person to import from any country any regulated species in any form subject to regulation under a recommendation of the Commission, or

any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry under this part.

(f) For any person or vessel subject to the jurisdiction of the United States to land:

(1) Any tuna, except bluefin, in forms other than round (fins intact), or other than eviscerated with the head, tail, and fins removed, except that one pectoral fin must remain attached; and

(2) Bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and tail must remain attached.

(g) For any person subject to the jurisdiction of the United States to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any regulated species that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

(h) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.

(i) For any person to assault, impede, oppose, intimidate, or interfere with, by any means, NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.

(j) For any person on board a vessel subject to the jurisdiction of the United States to fish for or catch any Atlantic tuna with gear that is not authorized under § 285.21(b) or § 285.51, or to retain or land Atlantic tunas taken with unauthorized gear.

(k) For any person to possess any Atlantic tuna on board a vessel subject to the jurisdiction of the United States that has gear on board that is not authorized under § 285.21(b) or § 285.51, unless authorized under § 285.7.

(l) For any person to violate any conditions specified by the Director in any exemption issued under § 285.7.

(m) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by

any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(n) For any person to assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(o) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an at-sea observer conducting his or her duties aboard a vessel.

(p) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 285.8(c).

(q) Purchase, receive, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of vessels not permitted to do so under this part, or purchase, receive, or transfer for commercial purposes any Atlantic tunas without a valid dealer permit issued under this part.

(r) Sell, offer for sale, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of a vessel not permitted to do so under this part or to any person or vessel without a valid dealer permit issued under this part.

(s) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach of an authorized officer.

[50 FR 43398, Oct. 25, 1985, as amended at 57 FR 372, Jan. 6, 1992; 58 FR 45289, Aug. 27, 1993; 60 FR 38511, July 27, 1995]

§ 285.4 Facilitation of enforcement.

(a) The Secretary, the Secretary of the Department in which the U.S. Coast Guard is operating, and the U.S. Customs Service will enforce jointly this part and the provisions of the Act.

(b) Enforcement agents of NMFS will enforce provisions of this part and the Act on behalf of the Secretary and may take any actions authorized with respect to enforcement. By agreement, the Secretary may utilize the personnel, services, and facilities of any other Federal Agency to enforce these rules and the Act. By agreement, the Secretary also may designate personnel of

a State to enforce these rules and the Act.

(c) The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Act and this part.

(d) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF-FM radiotelephone is the preferred method of communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop. In the International Code of Signals, "L" (—.)¹ means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *Prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(e) *Boarding.* The operator of a vessel directed to stop must

¹Period (.) means a short flash of light; dash (—) means a long flash of light.

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(f) *Signals*. The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (-.- -.- -.-) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (... —.- ...—) means "you should stop or heave to; I am going to board you."

[50 FR 43498, Oct. 25, 1985; 50 FR 45828, Nov. 4, 1985, as amended at 53 FR 24645, June 29, 1988]

§ 285.5 Civil procedures.

(a) The method for assessment of civil penalties for violation of these rules or the Act must be in accordance

with the procedures set forth in 15 CFR part 904.

(b) In view of the perishable nature of tuna when not processed otherwise than by chilling or freezing, authorized officers may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen tunas that may be seized and forfeited under the Act and this part.

(c) The purchaser must remit the proceeds of any sale made under paragraph (b) of this section to the Director. The Director will deposit and retain the proceeds in the Suspense Account of NMFS (Account No. DO 6875—Phase 19) after deducting the reasonable cost of the sale, if any, pending judgement of the court or other disposition of the case.

[50 FR 43398, Oct. 25, 1985, as amended at 53 FR 24645, June 29, 1988; 57 FR 32923, July 24, 1992]

§ 285.6 Civil penalties.

Any person who:

(a) Violates any provisions of § 285.3 (a), (b), or (f) of this part will be assessed a civil penalty of not more than \$25,000 for a first violation and a civil penalty of not more than \$50,000 for any subsequent violation;

(b) Violates any provision of § 285.3 (c) or (d) of this part will be assessed a civil penalty of not more than \$1,000 for a first violation and a civil penalty of not more than \$5,000 for any subsequent violation; or

(c) Violates any provision of § 285.3(e) will be assessed a civil penalty of not more than \$100,000.

[50 FR 43398, Oct. 25, 1985, as amended at 52 FR 25012, July 2, 1987]

§ 285.7 Experimental fishing exemption.

(a) Upon a written request received at least 30 days before the desired effective date, the Director, in order to provide for the conduct of experimental fishing to gather data needed to make management decisions for the Atlantic tuna resources or fisheries, may exempt any person or vessel from specific requirements of this part.

(b) A request for an exemption must be in writing and received by the Director at least thirty (30) days before the desired effective date. The request

must specify any vessel(s) involved, describe the gear to be used, the manner in which the gear will be fished, the duration of the activity, the area where the activity will be conducted, the species of tuna that will be caught, the anticipated bycatch, the port(s) involved and the disposition of the catch, both domestic and foreign. The request must include any fee specified by the Director pursuant to §285.7(e).

(c) The Director may not grant such exemption unless it is determined that the purpose, design, and administration of the experimental fishing is consistent with the objectives of the management program, ICCAT recommendations, the provisions of the Atlantic Tunas Convention Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the Atlantic tunas resources and fisheries; or

(2) Create significant enforcement problems.

(d) Each vessel participating in any experimental fishing activity is subject to all provisions of this part except those specified in the exemption granted that activity by the Director. The conditions, duration of the experimental fishing, and the provisions of this part to which the exemption applies, will be specified in a letter issued by the Director to each vessel or person participating in the exempted activity. This letter must be carried aboard the vessel conducting the exempted activity. Any exemption authorization that has been altered, erased, or mutilated is invalid. A letter of exemption issued under this part is not transferable or assignable. Any violation of any condition in a letter of exemption shall render it null and void upon receipt of written notification from the Director.

(e) The Director may charge a fee to recover the administrative expenses of issuing a letter of exemption. The amount of the fee will be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs. Persons seeking an exemption may contact the Director at (301) 713-2334 to

find out the applicable fee. Failure to pay the fee will preclude issuance of the exemption. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any letter of exemption.

[58 FR 45290, Aug. 27, 1993]

§285.8 At-sea observer coverage.

(a) Notwithstanding the selection for placement or the placement of on-board fishery observers under the authority of any other Federal statute or fisheries regulation, NMFS may require observers for any vessel engaged in directed fishing for, or incidentally taking, Atlantic tunas at any time.

(b) Owners of vessels selected for observer coverage are required to notify the appropriate Fisheries Science Center Director before commencing any fishing trip that may result in the harvest of any Atlantic tuna. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

[58 FR 45290, Aug. 27, 1993]

Subpart B—Atlantic Bluefin Tuna (*Thunnus thynnus thynnus*)

SOURCE: 50 FR 43400, Oct. 25, 1985, unless otherwise noted.

§ 285.20 Fishing seasons.

(a) *Commencement.* Fishing in the regulatory area for Atlantic bluefin tuna will begin

(1) On January 1 of each year:

(i) For anglers fishing for Atlantic bluefin tuna under the quota specified in § 285.22(d);

(ii) For vessels permitted in the Incidental Catch category fishing under the quota specified in § 285.22(e); and

(iii) For anglers participating in the tag and release program under § 285.27.

(2) On June 1 of each year:

(i) For vessels permitted in the General category fishing under the quota specified in § 285.22(a), and

(ii) For vessels permitted in the Harpoon Boat category fishing under the quota specified in § 285.22(b).

(3) On August 15 of each year:

(i) For vessels permitted in the Purse Seine category fishing under the quota specified in § 285.22(c).

(ii) [Reserved]

(4) Consistent with the Convention, the Act and this part, the Assistant Administrator may change the commencement date under this section for any vessel permit category or person (angler) if the Assistant Administrator determines that the changed date will enable scientific research on the status of the stock to be conducted more effectively and will not prevent the quotas for the affected fishery from being caught, based upon historical catch data or other relevant information. The Assistant Administrator will publish a notice in the FEDERAL REGISTER of any change in the commencement date(s) for fishing under this section at least 60 days before commencement of the affected fishery.

(b) *Closure.* (1)(i) NMFS will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, NMFS will project a date when the catch of Atlan-

tic bluefin tuna will equal any quota established under this section, and will file notification with the Office of the Federal Register stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

(ii) Upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, or the catch rate in one area may preclude anglers in another area from a reasonable opportunity to harvest a portion of the quota, NMFS may close all or part of the Angling category, and may reopen it at a later date if NMFS determines that ABT have migrated into an identified area. In determining the need for any such temporary or area closure, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and monitoring the status of the stock;

(B) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding four years;

(C) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no allocation is made;

(D) The projected ability of the entire category to harvest the remaining amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

(2) Angling for Atlantic bluefin tuna under a tag and release program under § 285.27 may continue even after fishing for a quota has ceased.

(3) A vessel permitted in the Purse Seine category may fish under the bluefin tuna quota specified in § 285.22(c), or in fisheries for Atlantic yellowfin or skipjack tuna or other fisheries where bluefin tuna might be taken as bycatch, only until the allocation of bluefin tuna assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation of Atlantic bluefin tuna, directed purse seine fisheries for Atlantic tunas are closed to such vessel and the vessel will be deemed to have been given notice to that effect.

(c) *State actions.* Nothing in this section may be construed to invalidate any more restrictive commencement or closure date established by any State in waters under its jurisdiction.

[50 FR 43400, Oct. 25, 1985, as amended at 53 FR 24645, June 29, 1988; 57 FR 32920, July 24, 1992; 60 FR 38512, July 27, 1995; 62 FR 8635, Feb. 26, 1997]

§ 285.21 Vessel permits.

(a) *Permit requirements.* A vessel that fishes for, takes, retains or possesses Atlantic bluefin tuna must have on board a valid permit issued to the vessel owner under this section.

(b) *Categories of permits.* (1) Upon submission of a complete and valid application pursuant to paragraph (c) of this section, the owner of each qualifying vessel may be issued a permit by NMFS for one of the following permit categories: General, Charter/Headboat, Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permit will not be issued for more than one category.

(2) Persons may fish for, retain or possess Atlantic bluefin tuna only under the quota, catch limits, and size classes applicable to the permit category of the carrying vessel, except that anglers on board General and Charter/Headboat category vessels may fish for and retain school, large school and small medium bluefin tuna, subject to the limits applicable to the Angling category only until such time that a large medium or giant bluefin tuna is caught, retained or possessed on board the vessel.

(3) School, large school and small medium bluefin tuna landed by anglers on board General and Charter/Headboat category vessels are counted against the Angling category quota. When the General category fishery is open, large medium and giant bluefin tuna landed by anglers on board General and Charter/Headboat category vessels are counted against the General category quota. When the General category fishery is closed, or at any time in the Gulf of Mexico, large medium and giant bluefin tuna landed by anglers on board Angling and Charter/Headboat category vessels pursuant to § 285.24(d)(2) may not be sold and are counted against the Angling category quota.

(4) Persons fishing for Atlantic bluefin tuna must not possess on board or use any gear inappropriate to the category for which the carrying vessel is permitted:

(i) General—rod and reel (including downriggers), handline, harpoon, bandit gear;

(ii) Charter/Headboat—rod and reel (including downriggers), handline;

(iii) Angling—rod and reel (including downriggers), handline;

(iv) Harpoon Boat—harpoon;

(v) Purse Seine—purse seine nets;

(vi) Incidental Catch—purse seine nets, fixed gear, traps, longlines.

(5) When fishing for, or possessing, Atlantic bluefin tuna, operators of vessels permitted for the Charter/Headboat category must have on board a current copy of the operator's merchant marine license or the operator's uninspected passenger vessel license.

(6) Vessels permitted for any category other than the Angling category are eligible to conduct commercial fishing for Atlantic bluefin tuna.

(7) Except for purse seine vessels for which a permit has been issued under this section, an owner may change the category of the vessel's Atlantic tunas permit to another category by application on the appropriate form to NMFS or by dialing 1-888-USA-TUNA before the specified deadline. After the deadline, the vessel's permit category may not be changed to another category for the remainder of the calendar year, regardless of any change in the vessel's ownership. For 1997, the deadline is July 28, 1997. In years after 1997, the deadline for category changes is May 15.

(c) *Application procedure.* A vessel owner applying for a permit under this section must submit a completed permit application as indicated in the application instructions at least 30 days before the date on which the applicant desires to have the permit made effective.

(1) Applicants must provide all information concerning vessel, gear used, fishing areas, and fisheries participation, including sworn statements relative to income requirements and permit conditions, as indicated in the instructions on the application form.

(2) Applicants must also submit a copy of the official state registration or United States Coast Guard documentation, charter/headboat license, and, if a boat is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation), along with the names of all shareholders owning 5 percent or more of the corporation's stock.

(3) NMFS may require the applicant to provide documentation supporting any sworn statements required under this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (j) of this section.

(4) Applicants must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, a permit shall be issued within 30 days of receipt of a completed application. An application is complete when all requested forms, reports, information, sworn statements and supporting documentation have been received.

(2) The applicant will be notified of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under this section remains valid until it expires or is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904. Permits expire on the date indicated on the permit or when any of the information previously submitted on the application changes. Permits must be renewed upon expiration. Renewal of permits must be initiated at least 30 days before the expiration date to avoid a lapse in validity.

(f) *Alteration.* A permit issued under this section which is substantially altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits will be issued when requested by the owner or authorized representative. A request for a replacement permit will not be considered a new application.

An appropriate fee, consistent with paragraph (k) of this section, may be charged for issuance of the replacement permit.

(h) *Transfer.* A permit issued under this section, except in the case of a purse seine permit as allowed under paragraph (m) of this section, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display.* A permit issued under this section must be carried on board the vessel at all times. The permit must be displayed for inspection upon request of any authorized officer or any employee of NMFS designated by the Regional Director for such purpose. Upon sale of any large medium or giant Atlantic bluefin tuna, the vessel permit must be presented for inspection to the permitted dealer completing the landing card.

(j) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(k) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee shall be determined, at least biannually, in accordance with the procedures of the NOAA Finance Handbook, available from the Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with application or renewal instructions. The required fee must accompany each application or renewal. Failure to pay the fee will preclude issuance of the permit.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change by phone (1-888-USA-TUNA) or internet (<http://www.usatuna.com>). In such case, a new permit will be issued to incorporate the new information. For certain informational changes, NMFS may require supporting documentation before a new permit will be issued or may require payment of an additional fee. Permittees will be notified of such

requirements, if applicable, when reporting changes. In case of failure to report changes, the permit shall be void as of the sixteenth day after a change in the permit information should have been reported as found in an action under 15 CFR part 904.

(m) *Closed categories.* The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to the owner of any vessel that was replaced or consolidated with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

[50 FR 43400, Oct. 25, 1985, as amended at 58 FR 45290, Aug. 27, 1993; 60 FR 38512, July 27, 1995; 62 FR 332, Jan. 3, 1997; 62 FR 27519, May 20, 1997; 62 FR 30744, June 5, 1997; 62 FR 38487, July 18, 1997]

§ 285.22 Quotas.

The total annual (January 1–December 31) amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 633 mt, of which 374 mt are available in the period beginning June 1 and ending August 31; 187 mt are available in the period beginning September 1 and ending September 30; and 72 mt are available in the period beginning October 1.

(2) On the basis of the statistics referenced at § 285.20(b)(1), the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal the available quota in any period, and will publish a notification in the FEDERAL REGISTER stating that fishing for, retaining, possessing, or

landing Atlantic bluefin tuna under the quota for that period is prohibited from a specified time on that date until the opening of the subsequent quota period, whereupon a quota equal to the initial quota for that period as adjusted for estimated overharvest or underharvest prior to that period will become available.

(3) When the October General category catch is projected to have reached a total of 10 mt less than the overall October quota, the Director will publish a notification in the FEDERAL REGISTER to set aside the remaining quota for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. The daily catch limit for the set-aside area will be one large medium or giant Atlantic bluefin tuna per vessel per day. Upon the effective date of the set-aside, fishing for, retaining, or landing large medium or giant Atlantic bluefin tuna must cease in all waters outside of the set-aside area.

(b) *Harpoon Boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 53 mt.

(c) *Purse Seine.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 250 mt.

(d) *Angling.* The total annual amount of Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by anglers is 265 mt. No more than 6 mt of this quota may be large medium or giant bluefin tuna quota and no more than 108 mt of this quota may be school Atlantic bluefin tuna. The size class subquotas for Atlantic bluefin tuna are further subdivided as follows:

(1) 51 mt of school, 71 mt of large school or small medium, and 4 mt of large medium or giant Atlantic bluefin tuna may be caught, retained, possessed, or landed south of 38°47' N. lat.

(2) 57 mt of school, 80 mt of large school or small medium, and 2 mt of large medium or giant Atlantic bluefin tuna may be caught, retained, possessed, or landed north of 38°47' N. lat.

(e) *Incidental.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Incidental Catch category under §285.21(b) is 110 mt. This quota is further subdivided as follows:

(1) 109 mt for longline vessels. No more than 86 mt may be caught, retained, possessed, or landed in the area south of 34°00' N. lat.

(2) For vessels fishing under §285.23 (a) and (b), 1 mt may be caught, retained, possessed, or landed in the regulatory area.

(f) *Reserve.* The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments and fishery independent research is 33 mt. The Assistant Administrator may allocate any portion (from zero to 100 percent) of this amount to any category or categories of the fishery, including research activities authorized under §285.1(c). The Assistant Administrator will publish a notice of allocation of any inseason adjustment amount in the FEDERAL REGISTER before such allocation is to become effective. Before making any such allocation, the Assistant Administrator will consider the following factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(g) The catching or retention of school, large school or small medium Atlantic bluefin tuna is prohibited ex-

cept as allowed by paragraph (d) of this section.

(h) If the Assistant Administrator determines, based on landing statistics and other available information, that an annual quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator will subtract the overharvest from, or add the underharvest to, that quota category for the following year; provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of the Commission regarding country quotas. The Assistant Administrator will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the FEDERAL REGISTER.

(i) *Transfers between categories.* The Assistant Administrator is authorized to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period or the second year of a biannual quota period as defined by ICCAT, the Assistant Administrator determines, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the Assistant Administrator may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated at paragraphs (f) (1) through (4) of this section, and the probability that any transfers between categories will not result in the total single-year quota or the total 2-year quota being exceeded. The Assistant Administrator shall file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before such transfer is to become effective.

[57 FR 32920, July 24, 1992, as amended at 58 FR 45291, Aug. 27, 1993; 59 FR 17725, Apr. 14, 1994; 60 FR 38512, July 27, 1995; 61 FR 30186, June 14, 1996; 62 FR 35109, June 30, 1997; 62 FR 38941, July 21, 1997]

§ 285.23 Incidental catch.

(a) *Herring, mackerel, and menhaden purse seine gear and fixed gear other than longlines or traps.* Subject to the quotas in § 285.22, large medium and giant Atlantic bluefin tuna may be retained during any fishing trip, on board a vessel for which an Incidental Catch permit has been issued under § 285.21 that is fishing with herring, mackerel, and menhaden purse seine gear or fixed gear other than longlines or traps principally for species of fish other than tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish on board the vessel at the end of each fishing trip.

(b) *Traps.* Subject to the quotas in § 285.22, large medium and giant Atlantic bluefin tuna may be retained during any fishing trip on board a vessel for which an Incidental Catch permit under § 285.21 has been issued that catches Atlantic bluefin tuna incidentally while fishing with traps, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish landed by the owner of the vessel within the preceding 30-day period.

(c) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental Catch permit issued under § 285.21 may retain or land large medium and giant Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna retained or landed may not exceed:

(1) One fish per vessel per fishing trip landed south of 34°00' N. latitude, provided that for the months of January through April at least 1,500 pounds (680 kg), and for the months of May through December at least 3,500 pounds (1,588 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 34°00' N. latitude.

(d) *Purse Seine.* When fishing for Atlantic yellowfin or skipjack tuna, vessels for which an Atlantic bluefin tuna Purse Seine category permit has been issued are allowed a 1 percent per trip (by weight) incidental take of bluefin less than the large medium size class. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota allocation for bluefin tuna.

[57 FR 32921, July 24, 1992, as amended at 58 FR 45292, Aug. 27, 1993; 59 FR 17726, Apr. 14, 1994; 60 FR 38513, July 27, 1995]

§ 285.24 Catch limits.

(a) *General category.* (1) From the start of each fishing year, except on designated restricted-fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under this part. On designated restricted-fishing days, persons aboard such vessels may not fish for, possess or retain Atlantic bluefin tuna. For calendar year 1997, designated restricted-fishing days are: July 16, 17, 23, and 30; August 6, 10, 11, 12, 17, 20, 24, and 27; and September 1, 3, 6, 7, 10, 11, 14, 17, 19, 21, 24, and 28.

(2) The Assistant Administrator may increase or reduce the catch limit over a range from zero (restricted fishing days) to a maximum of three large medium or giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a document in the FEDERAL REGISTER of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice of catch limit adjustment shall be filed at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

(3) Large medium and giant Atlantic bluefin tuna may be possessed or retained on board a vessel for which a General category permit has been issued if the amount does not exceed a single day's catch, regardless of the

length of the trip, as allowed by the daily catch limit in effect on that day.

(4) For calendar year 1997, anglers on board vessels permitted in the General category may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day. However, on allowable fishing days, once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained, fishing by persons on board the vessel must cease and the vessel must proceed to port.

(b) *Harpoon Boat category.* Vessels permitted in the Harpoon Boat category may catch multiple giant bluefin tuna but only one large medium bluefin tuna per day per vessel may be caught.

(c) *Purse Seine category.* Large medium bluefin tuna may be caught from a vessel for which a Purse Seine category permit has been issued provided that the total amount of large medium bluefin landed per trip does not exceed 15 percent by weight of the total amount of giant Atlantic bluefin tuna landed on that trip, and the total annual amount of large medium bluefin landed does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna allocated to that vessel for that fishing season.

(d) *Angling category.* (1) Each angler on board a vessel permitted in the Angling category may catch and retain each day no more than two Atlantic bluefin tuna which may be from the school or large school size class. In addition to the per angler limits, one small medium size class bluefin tuna may be retained each day, per angling category vessel. Anglers may not retain young school Atlantic bluefin tuna.

(2) In addition to the daily catch limit for school, large school and small medium bluefin tuna, a vessel for which an Angling category permit has been issued may catch and retain annually one large medium or giant Atlantic bluefin tuna, to be counted against the Angling category quota specified in § 285.22. The owner or operator of the vessel must report to the nearest

NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a tag. No such large medium or giant Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes. A list of local NMFS enforcement offices may be obtained from the Regional Director.

(3) The Assistant Administrator may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator will publish a document in the FEDERAL REGISTER of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice of catch limit adjustment shall be filed at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

(4) Anglers on board vessels for which an Angling category permit has been issued may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day.

(e) *Charter/Headboat category.* (1) Persons aboard vessels for which a Charter/Headboat category permit has been issued under this part are subject to the daily catch limit in effect on that day for school, large school, and small medium ABT applicable to the Angling category or the daily catch limit in effect on that day for large medium and giant ABT applicable to the General category. The size category of the first ABT retained or possessed shall determine the fishing category applicable to the vessel that day. Persons aboard the vessel may possess ABT in an amount

not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day for the Angling or General category, as applicable. School, large school, and small medium ABT landed by persons aboard Charter/Headboat category vessels are counted against the Angling category quota. Large medium and giant ABT landed by persons aboard Charter/Headboat category vessels are counted against the General category quota if landed under paragraph (a)(1) of this section, or the Angling category quota, if landed under paragraph (d)(2) of this section.

(2) When commercial fishing by vessels for which General category permits have been issued under this part is authorized, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under this part are subject to the daily catch limit in effect for the General category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(1) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained on authorized commercial fishing days, persons aboard vessels for which Charter/Headboat category permits have been issued under this part must cease fishing and the vessel must proceed to port. Large medium or giant ABT landed under this paragraph (e)(2) may be sold.

(3) When the General category fishery is closed, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under this part are subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (d)(2) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

(4) At any time when fishing in the Gulf of Mexico, operators of vessels for which Charter/Headboat category permits have been issued under this part

may not fish for, catch, retain or possess bluefin tuna except that large medium and giant Atlantic bluefin tuna taken incidental to fishing for other species may be retained subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (d)(2) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

[57 FR 32921, July 24, 1992, as amended at 59 FR 17726, Apr. 14, 1994; 60 FR 38513, July 27, 1995; 61 FR 30187, June 14, 1996; 62 FR 30745, June 5, 1997; 62 FR 38941, July 21, 1997]

§285.25 Purse seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a vessel with a permit issued under §285.21(b) conducting a directed fishery for Atlantic bluefin tuna with nets, other than a trap net, must use a purse seine net with a mesh size equal to or smaller than 4.5 inches in the main body (stretched when wet) and which has at least 24-count thread throughout the net.

(b) *Exemption.* The Director may exempt any person from the mesh restrictions in paragraph (a) of this section if it is determined that the net sought to be exempted will not result in significant injury or mortality to Atlantic bluefin tuna which are encircled by the net but manage to escape.

(c) *Inspection.* Any owner of a purse seine vessel with a permit issued under §285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip that may result in the harvest of any regulated species and before offloading any Atlantic bluefin tuna. The vessel owner must request such inspection at least 24 hours before commencement of a fishing trip and offloading by calling 508–563–5721 or 508–281–9261. Purse seine vessel owners must have each large medium and giant bluefin tuna in their catch weighed, measured, and the information recorded on the landing card required under §285.28(a) at the time of

offloading and prior to transporting said tuna from the area of offloading.

(d) *Vessel allocations.* (1) Owners or operators of vessels for which a Purse seine permit has been issued under §285.21(b) must apply for an allocation of Atlantic bluefin tuna from the quotas specified in §285.22. The owner or operator must apply for this allocation in writing to the Regional Director by April 15 and must specify the particular size class or classes of Atlantic bluefin tuna for which the vessel will fish. The owner or operator must supply documentation of the vessel's stockholders, owners, partners, or association structure.

(2) The Regional Director will review applications for allocations of Atlantic bluefin tuna on or about May 1, and will make equal allocations of the available size classes of Atlantic bluefin tuna among vessel owners so requesting. Such allocations are freely transferable, in whole or in part, among purse seine vessel permit holders. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to the Regional Director 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (mt) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under §285.24(c) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught.

(3) Purse seine vessel owners may apply to the Regional Director to permanently consolidate vessel permits issued under §285.21(b). Upon approval of consolidation by the Regional Director, the Atlantic tuna permit(s) of the transferring vessel(s) will be cancelled, and the holder of the consolidated per-

mit is authorized to apply for allocations of Atlantic bluefin tuna commensurate with the number of consolidated permits. Purse seine vessel owners who cancel their permit by means of consolidation must not fish their vessel in any fishery in which Atlantic bluefin tuna might be caught.

(e) *Transfer at sea.* Purse seine vessel owners or operators may transfer large medium and giant Atlantic bluefin tuna at sea from the net of the catching vessel to another permitted purse seine vessel provided the amount transferred does not cause the receiving vessel to exceed its annual vessel allocation as modified by authorized transfers. Such at-sea transfers are authorized only between purse seine vessels permitted under §285.21 and not to buy boats permitted under §285.28.

[50 FR 43400, Oct. 25, 1985, as amended at 57 FR 32923, July 24, 1992; 58 FR 45292, Aug. 27, 1993; 60 FR 38514, July 27, 1995; 61 FR 30187, June 14, 1996]

§285.26 Size classes.

Total curved fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body from the tip of the upper jaw to the fork of the tail, which abuts the ventral side of the pectoral fin and the ventral side of the caudal keel. For any Atlantic bluefin tuna found with the head removed, it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total curved fork length equals pectoral fin curved fork length multiplied by a factor of 1.35. The pectoral fin curved fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body from the ventral side of the pectoral fin to the fork of the tail, which abuts the ventral side of the caudal keel.

Size category	Total curved fork length	Pectoral fin curved fork length	Approx. round weight
Young School	Less than 27 inches	Less than 20 inches	Less than 14 lb.
School	Less than 69 cm	Less than 51 cm	less than 6.4 kg.
	27 to <47 inches	20 to <35 inches	14 to <66 lb.
	69 to <119 cm	51 to <89 cm	6.4 to <30 kg.
Large School	47 to <59 inches	35 to <44 inches	66 to <135 lb.
	119 to <150 cm	89 to <112 cm	30 to <61 kg.
Small Medium	59 to <73 inches	44 to <54 inches	135 to <235 lb.
	150 to <185 cm	112 to <137 cm	61 to <107 kg.
Large Medium	73 to <81 inches	54 to <60 inches	235 to <310 lb.
	185 to <206 cm	137 to <152 cm	107 to <141 kg.
Giant	81 inches or greater	60 inches or greater	310 lb or greater.
	206 cm or greater	152 cm or greater	141 kg or greater.

[60 FR 14387, Mar. 17, 1995, as amended at 60 FR 38514, July 27, 1995; 61 FR 30187, June 14, 1996]

§ 285.27 Tag and release program.

(a) Notwithstanding other provisions of this part, a person aboard a vessel permitted under this part, other than a person aboard a vessel permitted in the General category on a designated restricted-fishing day, may fish for Atlantic bluefin tuna under a tag and release program, provided the person tags all Atlantic bluefin tuna so caught with tags issued or approved by NMFS under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. To participate in this program, an angler must obtain tags, reporting cards, and detailed instructions for their use from the Cooperative Tagging Center, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149-1099 or by calling (800) 437-3936.

(b) Tags obtained from sources other than NMFS may be used to fish for Atlantic bluefin tuna provided the angler has registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of tags from that source. Anglers using an alternative source of tags wishing to tag bluefin tuna can call (800) 437-3936 or write NMFS at the address given above.

(c) Anglers registering for the Atlantic bluefin tagging program are required to provide their name, address, phone number, and, if applicable, identify the alternate source of tags.

(d) If NMFS-issued or NMFS-approved tags are not on board a vessel, all anglers on board that vessel are deemed to be ineligible to fish under this section.

[60 FR 38514, July 27, 1995, as amended at 62 FR 30745, June 5, 1997]

§ 285.28 Dealer permits.

(a) *General.* A dealer purchasing, receiving, possessing, importing or exporting Atlantic bluefin tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy-boat, the buy-boat must have a valid permit under paragraph (l) of this section.

(b) *Application.* Applications for a dealer permit must be in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Buy-boats.* Each buy-boat must have a dealer permit issued under this section. The Regional Director will not issue a dealer permit under this section for a buy-boat operation to any vessel which has a valid fishing permit issued under § 285.21. The Regional Director will not issue a dealer permit to a buy-boat unless the owner or operator of the buy-boat agrees in writing to allow an individual authorized by the Regional Director to accompany the buy-boat on any trip to observe operations. The Regional Director will provide reasonable notice to the owner or operator of any buy-boat that an individual will be placed aboard. Failure to allow an authorized individual to be placed aboard following reasonable notice voids the permit. The Regional Director will reimburse the owner of any buy-boat for any expenses which the Regional Director determines to be reasonable and which are related directly to the placement of an individual aboard that buy-boat.

[50 FR 43400, Oct. 25, 1985, as amended at 53 FR 24645, June 29, 1988; 57 FR 373, Jan. 6, 1992; 58 FR 45293, Aug. 27, 1993]

§ 285.29 Recordkeeping and reporting.

(a) Any person issued a dealer permit under § 285.28 must report via electronic facsimile (fax) or an Interactive Voice Response System (IVRS) as instructed by the Regional Director

within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. Said report via fax or the IVRS must include the tag number affixed to the fish by the dealer, the date landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin curved fork length (indicating which length(s) measured), and the permit category of the landing vessel. In addition, dealers must submit to the Regional Director a daily report on a reporting card provided by NMFS. Said card must be postmarked and mailed at the dealer's expense within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each vessel permit holder or vessel operator must sign each reporting card immediately upon transfer of the fish to verify the name of the vessel that landed the fish and the vessel permit number, and each card must indicate the tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total and/or pectoral fin curved fork length (indicating which length(s) measured), gear used, and area where the fish was caught. The dealer purchasing or receiving the Atlantic bluefin tuna must inspect the vessel permit and verify that the required vessel name and vessel permit information is correctly recorded on the reporting card.

(b) Any person issued a dealer permit under § 285.28 must submit to the Regional Director a bi-weekly report on forms supplied by NMFS.

(1) Said report must be postmarked and mailed, at the dealer's expense, within 10 days after the end of each 2-week reporting period in which Atlantic bluefin tuna were purchased, received, or imported. The biweekly reporting periods are defined as the first day through the 14th day of each month and the 15th day through the last day of the month. Each report must specify accurately and completely for each tuna purchased or received: Date of landing or import, vessel Atlantic Bluefin Tuna permit number (if applicable), tail tag number, weight in pounds or kilograms (specify

if round or dressed), nature of the sale (dockside or consignment), price per pound or kilogram (round or dressed weight), and destination of the fish (domestic or export). In addition, dealers may indicate the quality rating of their bluefin tuna: (A, B, or C) for four attributes (freshness, fat, color, and shape).

(2) At the top of each form, the dealer must indicate the company name, license number, and the name of the person filling out the report. In addition, the beginning and ending dates of the 2-week reporting week period must be specified by the dealer and noted at the top of the form.

(c) Any person issued a dealer permit under §285.28 must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic bluefin tuna;

(d) Any person issued a dealer permit under §285.28 must retain at his/her place of business a copy of each landing card (including proof of fax or IVRS transmission) and a copy of each bi-weekly report for a period of 2 years from the date on which each was required to be submitted to the Regional Director.

(e) Each operator of a buy-boat, in addition to the above, must notify the Regional Director of any intended offloading, and must request a vessel inspection at least 6 hours before such offloading, by calling 508-281-9261 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling 508-992-7711. In making the request for inspection, the owner or operator of the buy-boat or a designated representative must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

(f) Beginning July 1, 1997 anglers are required to report directly to NMFS all ABT landed under the Angling category quota. Permittees will be notified by the Director of the applicable reporting requirements and procedures. Alternative reporting procedures may be established by the Director in cooperation with the states and may in-

clude telephone, dockside or mail surveys, mail-in or phone-in reports, tagging programs, or mandatory ABT check-in stations. A statistically-based sample of the Angling category permittees may be selected for these alternative reporting programs.

(Approved by the Office of Management and Budget under OMB control number 0648-0239)

[50 FR 43400, Oct. 25, 1985, as amended at 53 FR 24645, June 29, 1988; 57 FR 373, Jan. 6, 1992; 58 FR 45293, Aug. 27, 1993; 60 FR 14387, Mar. 17, 1995; 60 FR 38515, July 27, 1995; 62 FR 30745, June 5, 1997]

§285.30 Tags.

(a) *Issuance of tags.* The Regional Director will issue numbered tail tags to each person receiving a dealer's permit under §285.28.

(b) *Transfer of tags.* Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* (1) A dealer or agent must affix a tail tag to each Atlantic bluefin tuna purchased or received, immediately upon its offloading from a vessel. The tail tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(2) Any person who catches a large medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing said Atlantic bluefin tuna and make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a tail tag to it. A list of local NMFS enforcement offices can be obtained by contacting regional offices in Gloucester, MA (508-281-9261) and St. Petersburg, FL (813-570-5344). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A tag affixed to any Atlantic bluefin tuna under paragraph (c)(1) of this section or under §285.202(a)(6)(v) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any

package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

(e) *Reuse of tags.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Atlantic bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

[60 FR 14387, Mar. 17, 1995]

§ 285.31 Prohibitions.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

(1) Fish for, catch, possess, or land Atlantic bluefin tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(2) Fish for, catch, possess, or land Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

(3) Fish for, catch, possess or retain Atlantic bluefin tuna in excess of the quotas specified in § 285.22 except that fish may be caught and released under the provisions of § 285.27.

(4) Fish for, catch, or possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 285.24, except that fish may be caught and released under the provisions of § 285.27.

(5) Fish for, catch, possess, or land Atlantic bluefin tuna in excess of any allocation made under § 285.25(d);

(6) Fish for or catch Atlantic bluefin tuna in a directed fishery with purse seine nets without an allocation made under § 285.25(d);

(7) Fish for or catch Atlantic bluefin tuna in a directed fishery with nets other than those specified in § 285.25;

(8) For any vessel other than a vessel holding a purse seine permit issued under § 285.21(b), to approach to within 100 yd (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic bluefin tuna, or for any such purse seine vessel to approach to within 100 yd (91.5 meters) of any vessel, other than a purse seine vessel, actively fishing for Atlantic bluefin tuna;

(9) Retain or land Atlantic bluefin tuna in excess of the incidental catch provisions under § 285.23;

(10) Land any Atlantic bluefin tuna in forms other than round (fins intact), or other than eviscerated with the head and fins removed, except that one pectoral fin and the tail must remain attached;

(11) Retain any Atlantic bluefin tuna caught under the tag and release program allowed under § 285.27;

(12) Purchase, receive, or transfer Atlantic bluefin tuna from any person or vessel without a valid dealer permit issued under § 285.28(a);

(13) Purchase, receive, or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna without a valid dealer permit for buy-boat operations issued under § 285.28 unless between permitted purse seine vessels as authorized under § 285.25(e);

(14) Sell, offer for sale, or transfer any Atlantic bluefin tuna to any person or vessel other than to a person or vessel with a permit issued under § 285.28;

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any large medium or giant Atlantic bluefin tuna caught with rod and reel gear under § 285.24(d)(2) or § 285.24(e)(2);

(16) Engage in fishing with a vessel issued a permit under § 285.21 unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any Atlantic bluefin tuna under control (secured to the catching vessel or aboard) with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator;

(17) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna that will not be retained;

(18) Fail to inspect any vessel's permit or fail to affix immediately to any large medium or giant Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered tail tag when the tuna has been received for a commercial purpose or purchased by that dealer from any person or vessel having caught such tuna;

(19) Remove any tag affixed to an Atlantic bluefin tuna under § 285.30(c)(1) or under § 285.202(a)(6)(v), before removal is allowed under § 285.30(d), or fail to write the tag number on the shipping package or container as prescribed by that section;

(20) Purchase or transport with a buy-boat any Atlantic bluefin tuna captured incidentally by longlines;

(21) Begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic bluefin tuna without first requesting an inspection of the vessel in accordance with § 285.25;

(22) Fail to report the catching of any Atlantic bluefin tuna to which a plastic tag has been affixed under a tag and release program conducted by NMFS or any other scientific organization;

(23) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(24) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic bluefin tuna required by this subpart;

(25) Make any false statement, oral or written, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic bluefin tuna;

(26) Fish for, catch, retain, possess or land Atlantic bluefin tuna with longline gear except as provided in § 285.23(c);

(27) Fish for or catch Atlantic bluefin tuna with longline gear, or while having longline gear on board, if the vessel is permitted in the General or Harpoon Boat category under § 285.21;

(28) Fish for or catch school, large school or small medium Atlantic bluefin tuna with gear other than hook and line, which is held by hand or rod and reel made for this purpose, or to possess such fish taken with unauthorized gear;

(29) Use or possess handline or harpoon flotation gear which is not marked in accordance with § 285.33, or is marked with the Atlantic bluefin tuna permit number of another vessel;

(30) Fish for, catch, possess, or retain Atlantic bluefin tuna from the Gulf of Mexico except as specified under

§ 285.23(c) or § 285.24(e)(2), or if taken incidental to recreational fishing for other species and retained in accordance with § 285.24(d)(2);

(31) Fish for, catch, possess or retain Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.21, 285.22, 285.23, 285.24 and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

(32) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part;

(33) Retain young school Atlantic bluefin tuna for any purpose;

(34) Sell, offer for sale, purchase, receive for a commercial purpose, trade, or barter, or if a seafood dealer or processor, retain or possess, any Atlantic bluefin tuna other than a large medium or giant, except with documentation as specified in § 285.34;

(35) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, Atlantic bluefin tuna;

(36) Reuse any tail tag previously affixed to an Atlantic bluefin tuna under § 285.30 or reuse any tail tag number previously written on a shipping package or container as prescribed by that section; or

(37) Fish for, catch, possess, or retain any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued a permit for the Angling or Charter/Headboat categories under § 285.21, or a permit for the Purse Seine category under § 285.21 as authorized under § 285.23(d), or, for calendar year 1997, a permit for the General category under § 285.21.

(38) Fail to cease fishing and return to port once the catch limit for large medium and giant bluefin is retained or possessed on board vessels permitted in the General and Charter/Headboat categories.

(39) For owners or operators of General category permitted vessels, and persons aboard vessels permitted in the General category under § 285.21, to fish for, catch, possess, or retain, or to attempt to fish for, catch, possess, or retain Atlantic bluefin tuna on designated restricted-fishing days.

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(40) Fish for, catch, possess or retain, or attempt to fish for, catch, possess or retain Atlantic bluefin tuna by means, aid, or use of any aircraft, unless holding a valid permit in the Harpoon or Purse Seine category under § 285.21.

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this subpart, the Act, or any other rules promulgated under the Act.

[50 FR 43400, Oct. 25, 1985, as amended at 52 FR 25012, July 2, 1987; 53 FR 24645, June 29, 1988; 57 FR 374, Jan. 6, 1992; 57 FR 32922, July 24, 1992; 58 FR 45293, Aug. 27, 1993; 59 FR 17726, Apr. 14, 1994; 60 FR 14388, Mar. 17, 1995; 60 FR 38515, July 27, 1995; 62 FR 30745, June 5, 1997; 62 FR 38487, July 18, 1997; 62 FR 38487, July 18, 1997]

§ 285.32 Civil penalties.

(a) Any person who violates § 285.31(a)(1) through (a)(21) inclusive, or (a)(25) through (a)(31) inclusive, or (a)(33) and (a)(34) or (a)(36) through (a)(38) inclusive, will be assessed a civil penalty of not more than \$25,000 for a first violation and a civil penalty of not more than \$50,000 for a subsequent violation.

(b) Any person who violates § 285.31(a)(22) through (24) inclusive, or (a)(32), or (a)(35) will be assessed a civil penalty of not more than \$1,000, and a civil penalty of not more than \$5,000 for a subsequent violation.

(c) Any person who violates § 285.31(b) will be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. 971e.

[50 FR 43400, Oct. 25, 1985, as amended at 60 FR 38515, July 27, 1995]

§ 285.33 Gear restrictions.

(a) Any flotation device attached to handline or harpoon gear must be marked with the Atlantic bluefin tuna permit number of the vessel from which it is used. The required markings must be permanently affixed and at least one inch in height in block Arabic numerals of a color that contrasts with the background color of the flotation device.

(b) *Aircraft.* Other than for a vessel holding a valid permit in the Harpoon or Purse Seine category under § 285.21(a), locating, fishing for, catching, taking, retaining or possessing

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ABT by means, aid, or use of any aircraft is prohibited.

[50 FR 43400, Oct. 25, 1985, as amended at 62 FR 38487, July 18, 1997]

§ 285.34 Restrictions on sale.

(a) Any Atlantic bluefin tuna less than the large medium size class may not be, or attempted to be, purchased, bartered, traded, sold, or offered for sale, or retained or possessed by a dealer or seafood processor in any state unless it is lawfully imported and is accompanied by the Commission's Bluefin Tuna Statistical Document.

(b) Except for a bluefin tuna landed in a Pacific state and remaining in the state of landing, a bluefin tuna that is possessed by a dealer or seafood processor is deemed to be a bluefin tuna harvested from the Atlantic Ocean by a United States vessel unless it is accompanied by the Commission's Bluefin Tuna Statistical Document.

[60 FR 38515, July 27, 1995]

Subpart C—Atlantic Tunas Other Than Bluefin Tuna

SOURCE: 60 FR 38516, July 27, 1995, unless otherwise noted.

§ 285.50 Species subject to regulation.

Regulations contained in this subpart pertain to yellowfin tuna, bigeye tuna, albacore tuna, skipjack tuna and Atlantic bonito.

§ 285.51 Authorized fishing gear.

Fishing for, catching, retention or possession of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in the regulatory area by persons on board fishing vessels subject to the jurisdiction of the United States is authorized only for handline, rod and reel (including downriggers), harpoon, purse seine, longline, drift gillnet and bandit gear unless the gear is authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7.

§ 285.52 Size limits.

(a) Fishing for, catching, retaining, or possessing of Atlantic yellowfin and bigeye tunas in the regulatory area by persons aboard fishing vessels subject

to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna measuring 27 inches (69 cm) or more in total curved fork length.

(b) Total curved fork length is the sole criterion for determining the size class of whole (head on) Atlantic yellowfin and bigeye tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body from the tip of the upper jaw to the fork of the tail, which abuts the ventral side of the pectoral fin and the ventral side of the caudal keel.

[61 FR 30187, June 14, 1996]

§ 285.53 Vessel permits.

(a) *Permit requirements.* The operator of each vessel that fishes for, or takes, Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must have on board a valid permit issued under this section.

(b) *Commercial vessel permits.* As a prerequisite to selling Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito and to be eligible for exemption from applicable bag limits, if any, specified in this subpart, an owner or operator of a vessel that fishes for or takes Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must be issued a vessel permit in the commercial category appropriate for the gear type or method of fishing.

(c) *Charter/Headboat vessel permits.* Owners or operators of charter vessels and headboats must be issued a charter/headboat vessel permit to lawfully fish for, catch, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito. Anglers on board charter vessels and headboats must adhere to applicable catch limits for the recreational fisheries.

(d) *Recreational vessel permits.* Owners or operators of private recreational vessels must be issued vessel permits in order to fish for, catch, retain, or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas. Anglers aboard private recreational vessels must adhere to applicable daily catch limits. Atlantic tunas taken on board private recreational vessels may not be sold.

(e) *Purse seine.* Directed purse seine fishing for Atlantic yellowfin, bigeye,

albacore, and skipjack tunas and Atlantic bonito is restricted to owners of those purse seine vessels that have current Atlantic bluefin tuna purse seine permits under § 285.21(b) and that have reported, or replaced vessels that have reported, Atlantic yellowfin, skipjack, albacore or bigeye tuna landings to NMFS over the period 1989 through 1993. The owner or operator of such purse seine vessel must apply for authorization to fish for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in writing to the Regional Director by April 15. The owner must supply documentation of the vessel's stockholders, owners, partners, or association structure and records of landings to verify that the vessel meets the qualifying criteria. The Regional Director will review these applications for authorization on or about May 1 and issue authorizations as appropriate.

(f) *Exemptions.* In lieu of a permit issued under this section, persons on board a vessel for which a valid permit for the Atlantic bluefin tuna fishery has been issued under § 285.21 of this part are eligible to fish for and take Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito using the authorized gear and subject to the commercial fishing restrictions applicable to the category of permit issued for the vessel. In lieu of a permit issued under this section, owners or operators of vessels for which valid permits for the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630) have been issued are eligible to fish for and take Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito using the authorized gear and subject to fishing restrictions applicable to the permit issued to the vessel. Owners or operators of vessels fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handgear on board are exempt from the permit requirements of this section.

[60 FR 38516, July 27, 1995, as amended at 60 FR 57685, Nov. 17, 1995; 62 FR 332, Jan. 3, 1997]

§ 285.54 Vessel recordkeeping and reporting.

(a)(1) *Logbooks.* If selected and so notified in writing by the Director, the owner and/or operator of a vessel for which a permit has been issued under § 285.21 or § 285.53, must ensure that a daily logbook form is maintained of the vessel's fishing effort, catch, and disposition on forms available from the Science and Research Director. Such forms must be submitted to the Science and Research Director postmarked not later than the seventh day after sale of the fish offloaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms.

(2) *Tally sheets.* The owner and/or operator of a vessel for which a permit has been issued under § 285.21 or § 285.53, and who is required to submit a logbook under paragraph (a)(1) of this section, must ensure that copies of tally sheets are submitted for all fish offloaded and sold after a fishing trip. Each tally sheet must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual carcass weights are normally recorded. For species not individually weighed, tally sheets must record total weights by market category. Copies of tally sheets must be submitted with the logbook forms required under paragraph (a)(1) of this section.

(b) The master or other person in charge of a fishing vessel, subject to the jurisdiction of the United States, except vessels proceeding directly to Puerto Rico or to any other U.S. port for unloading, must report to the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. In addition, the master or other person in charge of a vessel, subject to the jurisdiction of the United States except a vessel without fish on board, must notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. Each report must include the name of the reporting vessel, the tonnage by species on board, and whether the fish were caught in Pacific or Atlantic waters.

(c) All such fishing vessels entering or leaving the regulatory area via the Panama Canal are subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate and the same will be noted on the vessel log. The official seals may be removed only by a designated agent of NMFS upon arrival at point of sale or delivery.

(d) The master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, must notify the Regional Director not less than 48 hours prior to any transfer of Atlantic tuna taken in the regulatory area to another vessel for the purpose of transshipment. Such reports must include the date and place of unloading, name and destination of the oncarrying vessel, and the tonnage by species of tuna transferred.

(e) The failure to file the reports or to follow the procedures required by this section, the tampering with or the removal of an official seal, or the alteration of a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States is a prohibited act within the meaning of § 285.3.

(f) Any person authorized to carry out enforcement activities under the Act or these regulations has power, without warrant or other process, to inspect, at any reasonable time, catch on board the vessel, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

(g) Owners and operators of vessels fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handgear on board are exempt from the reporting requirements of this section.

[60 FR 38516, July 27, 1995, as amended at 62 FR 30746, June 5, 1997]

§ 285.55 Dealer permits.

(a) *General.* Effective November 15, 1995, a dealer purchasing or attempting to purchase, receiving, possessing, importing or exporting Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must have a

valid permit required under this section.

(b) *Application.* Applications for a dealer permit must be in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Exemptions.* Dealers issued valid permits for the Atlantic bluefin tuna fishery under §285.28 of this part, dealers issued valid permits for the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630), and dealers located in Puerto Rico and the Virgin Islands who purchase, sell, or re-sell only Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands by handgear are exempt from the permit requirements of this section.

§285.56 Dealer recordkeeping and reporting.

(a) A dealer who has been issued a dealer permit pursuant to §285.55 must submit reports to the Fisheries Science Center Director as specified in paragraph (b) of this section. A report form is available from the Science and Research Director. The following information must be included in each report:

(1) Name, address, and permit number of the dealer.

(2) Names and official numbers of fishing vessels from which Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito were received.

(3) Dates of receipt of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito.

(4) Listed by each port and county where Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito were offloaded from fishing vessels:

(i) Total weight (pounds) for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito by market category, if applicable, and for other species received with the tuna, including, but not limited to, shark, swordfish, dolphin, and wahoo; and

(ii) Price per pound or total value paid by market category for tuna and other species, to the extent that such price information is known at the time of reporting.

(b) A report of tuna and other applicable species received by a dealer on the first through the 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of tuna and other applicable species received by the dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the 5th day of the following month. If no tuna was received during the reporting period, a report so stating must be submitted postmarked as specified for that respective reporting period.

(c) The reporting requirement of paragraph (a) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(d) In lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (a) of this section, a dealer may provide a report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed postmark date for submitting each such report.

(e) *Additional data and inspection.* Additional data may be collected by au-

thorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. Dealers are required to make tuna available for inspection by the Science and Research Director or an authorized officer and must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(f) *Recordkeeping.* Dealers must retain at their place of business a copy of each bi-weekly report for a period of 2 years from the date on which each was required to be submitted to the Regional Director.

(g) *Exemptions.* Dealers located in Puerto Rico and the Virgin Islands who purchase, sell, or re-sell only Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands by handgear are exempt from the reporting and recordkeeping requirements of this section.

§ 285.57 Purse seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must use a purse seine net with a mesh size as specified under § 285.25(a).

(b) *Inspection.* The owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of any regulated species. The owner or operator must request such inspection at least 48 hours before commencement of the first fishing trip of the season. In addition, at least 48 hours before commencement of offloading any Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito after a fishing trip, the

owner or operator must request an inspection of vessel and catch by calling 508-563-5721 or 508-281-9261. The inability to provide for an inspection within 48 hours of notification shall constitute a waiver of this requirement. The owner or operator of a purse seine vessel must have the vessel's catch information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

§ 285.58 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States must release, in a manner to promote survival, any yellowfin tuna or bigeye tuna less than the minimum size specified in § 285.52 taken incidental to authorized fishing in the regulatory area.

§ 285.59 Prohibitions.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

(1) Fish for, catch, possess, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito without a valid permit required under § 285.53 and carried on board the vessel;

(2) Fish for, catch, land, retain or possess, Atlantic yellowfin or bigeye tuna below the minimum size specified in § 285.52;

(3) Fail to release immediately with a minimum of injury any Atlantic yellowfin or bigeye tuna that will not be retained;

(4) Fish for or catch Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in a directed fishery with purse seine nets if without any remaining bluefin tuna allocation made under § 285.25(d);

(5) For any vessel other than a vessel holding a purse seine permit issued under § 285.53(d), to approach to within 100 yds (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito, or for any such purse seine vessel to approach to within 100 yds (91.5 meters) of any vessel, other than a purse seine vessel, actively fishing for Atlantic yellowfin, bigeye, alba-

core, and skipjack tunas and Atlantic bonito;

(6) Begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic tuna without first requesting an inspection of the vessel in accordance with § 285.57(b);

(7) Fail to report the catching of any Atlantic tuna to which a plastic tag has been affixed under a tag and release program conducted by NMFS or any other scientific organization;

(8) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(9) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic tuna required by this subpart;

(10) Make any false statement, oral or written, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic tuna;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part;

(12) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this subpart, the Act, or any other rules implemented under the Act.

Subpart D—Restrictions on Tuna Imports

§ 285.80 Basis and purpose.

(a) The stocks of Atlantic tunas under investigation and regulation by the Commission represent the concern of a number of countries interested in the conservation of such stocks. In order to assure that the achievement of the conservation objectives of the Commission are fulfilled the Act provides for certain restrictions on the importation of Atlantic tunas. Pursuant to section 6(c) of the Act, the Secretary, with the concurrence of the

Secretary of State, is directed to promulgate regulations to prohibit:

(1) The entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and

(2) The entry into the United States, from any country when vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area;

(3) The entry into the United States, from any country when vessels of such country engage in repeated and flagrant fishery operations in the regulatory area which seriously threaten the achievement of the objectives of the Commission's recommendations, of fish in any form of these species which are under investigation by the Commission and which were taken from the regulatory area.

(b) By letter of February 18, 1976, the Secretary of State concurred in the promulgation of the regulations in this part. Such regulations are designed to implement the provisions of section 6(c) of the Act with respect to import controls and to proscribe procedures for the establishment of restrictions on imports of tuna and tuna-like fish whenever such action shall be deemed warranted.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.81 Species subject to regulation.

The species of tuna currently subject to regulation by recommendation of the Commission within the meaning of section 6(c) are yellowfin tuna, bigeye tuna, and Atlantic bluefin tuna.

[46 FR 3026, Jan. 13, 1981]

§ 285.82 Species under investigation by the Commission.

Those species of tuna currently under investigation by the Commission within the meaning of section 6(c) of the Act are yellowfin, Atlantic bluefin, skipjack, albacore, bigeye and Atlantic bonito, and billfishes.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978]

§ 285.83 Investigations authorized.

(a) The Assistant Administrator will make, from time to time, such inquiries and investigations as may be necessary to keep himself and other interested persons currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations concerning those activities which are being carried out by foreign countries whose vessels engage in fishing within the regulatory area. In making a finding, as to:

(1) Whether or not fish in any form of those species which are subject to regulation by the Commission are being taken from the regulatory area in a manner or under such circumstances as would tend to diminish effectiveness of the conservation recommendations of the Commission; or

(2) Whether or not a country is condoning the use of vessels in the conduct of fishing operations in the regulatory area in such a manner or under such circumstances that would tend to diminish the effectiveness of the conservation recommendations of the Commission; or

(3) Whether or not a country is condoning the use of vessels in repeated and flagrant fishing operations which seriously threaten the achievement of the objectives of the Commission's recommendations, the Assistant Administrator will take into account, among such other considerations as may appear to be pertinent in a particular case, the following factors:

(i) Whether or not the country provides or causes to be provided to the Commission pertinent statistics on a timely basis;

(ii) Whether or not the country has in force conservation measures applicable to its own fishermen adequate for

the implementation of the Commission's recommendations;

(iii) Whether or not the country has in force measures for the control of landings in its ports of species subject to regulations which are taken in the regulatory area by fishermen of other countries contrary to the Commission's conservation recommendations;

(iv) Whether or not the country, having put conservation measures into effect, takes reasonable action to enforce such measures;

(v) The number of vessels of the country which conduct fishing operations in the regulatory area;

(vi) The quantity of species subject to regulation taken from the regulatory area by the Country's vessels contrary to the Commission's conservation recommendations and its relationship to (A) the total quantity permitted to be taken by the vessels of all countries participating in the fishery and (B) the quantity of such species sought to be restored to the stocks of fish pursuant to the Commission's conservation recommendations.

(b) Any person who has reason to believe that the vessels of any country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission or that other acts within the purview of the import control provisions of section 6(c) of the Act, are occurring or are likely to occur, may communicate his belief to the Assistant Administrator. Every such communication must contain or be accompanied by a full statement of the reasons for the belief, including a detailed description of such specific acts or events as may indicate a need for instituting an investigation as authorized in this part.

(c) Upon receipt by the Assistant Administrator of any communication submitted pursuant to paragraph (b) of this section and upon a finding that the communication complies with the requirements of that paragraph, the Assistant Administrator will promptly conduct an investigation to be made as appears to be warranted by the circumstances of the case. In conducting such investigations the Assistant Ad-

ministrator or his designated representative will consider any representations offered by foreign interests, importers, brokers, domestic producers, or other interested persons. Unless good cause to the contrary exists every such investigation will be completed within 60 days following receipt of the communication.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988]

§ 285.84 Publication of findings.

If it is determined on the basis of § 285.83 that species of fish subject to regulation or under investigation by the Commission, as the case may be, are ineligible for entry into the United States under section 6(c) of the Act, the Assistant Administrator with the approval of the Secretary of the Commerce and with the concurrence of the Secretary of State, will publish a finding to that effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding in the FEDERAL REGISTER every shipment of fish in any form of the species found to be ineligible will be denied entry unless it is established by satisfactory proof pursuant to § 285.85 that a particular shipment of such fish is not ineligible for entry: *Provided*, That entry will not be denied and no such proof will be required for any such shipment which, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988; 53 FR 27798, July 22, 1988]

§ 285.85 Proof of admissibility.

(a) For the purposes of § 285.83 of this part and section 6(c) of the Act a shipment of fish in any form of the species under regulation or under investigation by the Commission offered for entry, directly or indirectly, from a country named in a finding published under § 285.84 is eligible for entry if the shipment is accompanied by a certificate of eligibility certifying as may be appropriate, that the fish in the shipment:

(1) Are not of the species specified in the published finding;

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(2) Are of the species named in the published finding but were not taken in the regulatory area; or

(3) Are of the species named in the published finding but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment. The certificate shall be attached to the invoice and be in the following form:

CERTIFICATE OF ELIGIBILITY

I, _____, an authorized officer of the Government of _____, certify that the shipment of tuna accompanied by this certificate, consisting of _____ (quantity) of _____ (Species) in _____ (Number and kind of packages or containers bearing the following marks and numbers.)

☐ (a) Contains no tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975. (A certificate of authentication executed by a consular officer or a consular agent of the United States must be attached.)

☐ (b) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna were caught in the waters of _____ (Identify area or areas in which tuna were taken) by vessels subject to the jurisdiction of _____ and that none of the tuna were taken in the Atlantic Ocean or its adjacent seas. (A certificate of authentication executed by a consular officer or consular agent of the United States must be attached.)

☐ (c) Contains tuna of the species prohibited entry into the United States by virtue of a finding of ineligibility published under regulations issued pursuant to section 6(c) of the Atlantic Tunas Convention Act of 1975, but that such tuna, as shown in the attached declaration, were taken in strict conformity with applicable conservation laws and regulations in a fishing enterprise conducted under the American flag by vessels of the United States, are products of an American fishery within the meaning of Schedule 1, Part 15A, Tariff Schedules of the United States, were landed in a foreign country solely for transshipment without change in condition and are eligible for free entry under such Schedule and 19 CFR 10.78-10.79. (Where an entry is to be made pursuant to this paragraph, this certificate must be executed by a consular officer or consular agent

of the United States and the declaration(s) required by 19 CFR 10.79 and must be attached.)

Signature

Title

Address

(b) If the tuna are offered for entry under paragraph (a) or (b) of the Certificate of Eligibility, the certificate must be executed by a duly authorized official of the country named in the published finding and the certificate must be authenticated with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility and be substantially in the following form:

I, _____ (Name of the consular officer or consular agent) _____ (Title) of the United States of America at _____ (Place), duly commissioned and qualified, do hereby certify that _____ (Name of foreign official), whose true signature and official seal are, respectively subscribed and affixed to the annexed certificate, was, on the _____ day of _____, 19____, the date thereof, _____ (Title of foreign official), duly commissioned and qualified, to whose official acts faith and credit are due.

In witness whereof I have hereunto set my hand and affixed the seal of the _____ this day of _____19____,

Signature

(Name and full title of officer)

(c) If the tuna are offered for entry under paragraph (c) of the Certificate of Eligibility, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries", required by 19 CFR 10.79 must contain a further statement as follows: "We further declare that the

said tuna were caught by us in full compliance with part 285, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress.”

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978; and amended at 53 FR 24645, June 29, 1988]

§ 285.86 Removal of import restrictions.

Upon a determination by the Assistant Administrator that the conditions no longer exist which warranted the imposition of import restrictions in the finding published pursuant to § 285.84 the Assistant Administrator, with the approval of the Secretary and the concurrence of the Secretary of State, will publish a finding to such effect in the FEDERAL REGISTER. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein will terminate: *Provided*, That for a period of 1 year from such date of publication every shipment of fish in any form that was subject to the finding published pursuant to § 285.84 will continue to be denied entry unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish taken prior to or during the import restriction.

[41 FR 8352, Feb. 26, 1976. Redesignated at 43 FR 8554, Mar. 2, 1978, and amended at 44 FR 36045, June 20, 1979; 53 FR 24645, June 29, 1988]

§ 285.87 Import restrictions for Belize, Honduras, and Panama.

(a) Effective August 20, 1997 all shipments of Atlantic bluefin tuna or Atlantic bluefin tuna products in any form harvested by a vessel of Honduras or Belize will be denied entry into the United States, unless a validated Bluefin Statistical Document required under subpart F of this part, §§ 285.200 through 285.205, shows that a particular shipment of such bluefin tuna was exported prior to August 20, 1997.

(b) Effective January 1, 1998, all shipments of Atlantic bluefin tuna or Atlantic bluefin tuna products in any

form harvested by a vessel of Panama will be denied entry into the United States, unless a validated Bluefin Statistical Document required under subpart F of this part, §§ 285.200 through 285.205, shows that a particular shipment of such bluefin tuna was exported prior to January 1, 1998.

[62 FR 44423, Aug. 21, 1997]

Subpart E—International Port Inspection

SOURCE: 48 FR 53564, Nov. 28, 1983, unless otherwise noted.

§ 285.100 Basis and purpose.

At its sixth regular meeting, the International Commission for the Conservation of Atlantic Tunas (Commission) adopted an international port inspection scheme to assist in the enforcement of the Commission's recommendations. The following regulations have been adopted by the United States to implement the port inspection scheme.

§ 285.101 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by a contracting party (the United States and the countries listed in § 285.102(a)) as an authorized inspector for the Commission, who possesses an identification card so stating.

§ 285.102 Vessels subject to inspection.

(a) All United States tuna vessels or vessels carrying tuna and their catch, gear, and records are subject to inspection under this subpart by an authorized officer when landing or transshipping tuna or when making a port call at a port of the following countries, which are defined as the contracting parties. The names of any subsequent additional contracting parties may be added to the list by FEDERAL REGISTER notice. United States tuna vessels or vessels carrying tuna are also subject to the requirements of subparts A through C as appropriate.

- (1) Brazil
- (2) Cuba
- (3) France
- (4) Gabon
- (5) Ivory Coast

- (6) Portugal
- (7) Senegal
- (8) South Africa
- (9) Spain

(b) All tuna vessels or vessels carrying tuna, and registered by any of the above countries, and their catch, gear and records are subject to inspection under this subpart when landing or transshipping tuna or when making a port call in the United States.

(c) A vessel entering a port of the above countries because of *force majeure* shall be exempt from inspection by an authorized officer.

§ 285.103 Reports.

(a) Inspections must be reported on a standardized Commission form and signed by the authorized officer. The master is entitled to add or have added to the report, any observation which the master thinks suitable. If the master adds information to the report, he also must sign the report. The authorized officer will note in the vessel's log that the inspection has been made. A copy of the report will be given to the vessel master and a copy sent to the authorized officer's national authority.

(b) The master must allow the authorized officer to examine any portion of the catch and gear and provide any relevant documents as the authorized officer deems necessary to verify compliance with these regulations.

[48 FR 53564, Nov. 28, 1983, as amended at 53 FR 24645, June 29, 1988]

Subpart F—Bluefin Tuna Statistical Documentation

SOURCE: 60 FR 14388, Mar. 17, 1995, unless otherwise noted.

§ 285.200 Species subject to documentation requirements.

Imports into the United States and exports or re-exports from the United States of all bluefin tuna or bluefin tuna products regardless of ocean area of catch are subject to the documentation requirements of this subpart.

(a) Documentation is required for bluefin tuna identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen bluefin tuna, excluding fillets, No. 0303.49.00.20.

(b) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (i.e., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

§ 285.201 Documentation requirements.

(a) *Bluefin imports.* (1) Imports of all bluefin tuna products into the United States must be accompanied at the time of entry by an original completed approved Bluefin Tuna Statistical Document with the information and exporter's certification specified in § 285.202(a)(1) through (7). Such information must be validated as specified in § 285.202(a)(8) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed), unless the Assistant Administrator has waived validation requirements for the country pursuant to § 285.203.

(2) Bluefin tuna imported into the United States from a country requiring a tag on all such tuna available for sale must be accompanied by the appropriate tag issued by that country, and said tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or export, the tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) Dealers selling bluefin tuna that was previously imported into the United States for domestic commercial use must provide on the original Bluefin Tuna Statistical Document that accompanied the import shipment the correct information and importer's certification specified in § 285.202(a)(9). The original of the completed Bluefin

Tuna Statistical Document must be postmarked and mailed by said dealer to the Regional Director within 24 hours of the time the tuna was imported into the United States.

(b) *Bluefin exports.* (1) Dealers exporting bluefin tuna that was harvested by U.S. vessels and first landed in the United States must complete an original numbered Bluefin Tuna Statistical Document issued to that dealer by the Regional Director. Such an individually numbered document is not transferable or reusable and may be used only once by the dealer to which it was issued to report on a specific export shipment. Dealers must provide on the Bluefin Tuna Statistical Document the correct information and exporter certification specified in § 285.202(a)(1) through (7). As required under § 285.203, the Bluefin Tuna Statistical Document must be validated as specified in § 285.202(a)(8) by an official of the U.S. Government or, if authorized by NMFS, an official of an accredited institution. A list of such officials may be obtained by contacting the Office of Fisheries Conservation and Management, NMFS, Silver Spring, MD (301-713-2347), or the nearest NMFS Enforcement Office. A list of local NMFS enforcement offices can be obtained by contacting regional offices in Gloucester, MA (508-281-9261), St. Petersburg, FL (813-570-5344) and Long Beach, CA (310-980-4050). Dealers requesting government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) Dealers re-exporting bluefin tuna that was previously imported into the United States must provide on the original Bluefin Tuna Statistical Document that accompanied the import shipment the correct information and intermediate importer's certification specified in § 285.202(a)(9).

(3) Dealers must submit the original of the completed Bluefin Tuna Statistical Document to accompany the shipment of bluefin tuna to its export or re-export destination. A copy of the Bluefin Tuna Statistical Document completed as specified under paragraph (b)(1) or (2) of this section must be postmarked and mailed by said dealer

to the Regional Director within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* Dealers must retain at their principal place of business a copy of each Bluefin Tuna Statistical Document required to be submitted to the Regional Director pursuant to this section for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 285.202 Contents of documentation.

(a) A Bluefin Tuna Statistical Document, to be deemed complete, must:

(1) Have a document number assigned as prescribed by the country issuing the document;

(2) State the name of the country issuing the document, which is the country whose flag vessel harvested the bluefin tuna, regardless of where the tuna is first landed;

(3) State the name of the vessel that caught the fish and the vessel's registration number, if applicable;

(4) State the name of the owner of the trap that caught the fish, if applicable;

(5) State the point of export, which is the city, state or province, and country from which the bluefin tuna is first exported;

(6) State the following specified information about the shipment:

(i) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet or other);

(ii) The method of fishing used to harvest the fish (purse seine, trap, rod and reel, etc.);

(iii) The ocean area from which the fish was harvested (western Atlantic, eastern Atlantic, Mediterranean, or Pacific);

(iv) The weight of each fish (in kilograms for the same product form previously specified);

(v) The identifying tag number, if landed by vessels from countries with tagging programs;

(7) State the name and license number of, and be signed and dated in the exporter's certification block by, the exporter;

(8) If applicable, state the name and title of, and be signed and dated in the

validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the Bluefin Tuna Statistical Document; and

(9) As applicable, state the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) An approved Bluefin Tuna Statistical Document may be obtained from the Regional Director to accompany exports of bluefin tuna from the United States. Bluefin tuna dealers in countries that do not provide an approved Bluefin Tuna Statistical Document to exporters may obtain an approved Bluefin Tuna Statistical Document from the Regional Director to accompany exports to the United States.

(c) Dealers from a country exporting bluefin tuna to the United States may use the approved Bluefin Tuna Statistical Document obtainable from the Regional Director or documents developed by the dealer's country, if that country submits a copy, through the ICCAT Executive Secretariat, to the Assistant Administrator, and the Assistant Administrator concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, the Assistant Administrator shall provide a list of countries for which Bluefin Tuna Statistical Documents are approved, together with examples of such documents to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of bluefin tuna or bluefin tuna products offered for importation from said country(ies) may be accompanied by either that country's approved Bluefin Tuna Statistical Document or by the Bluefin Tuna Statistical Document provided to

the foreign country exporter by the Regional Director.

§ 285.203 Validation requirements.

(a) *Imports.* The approved Bluefin Tuna Statistical Document accompanying any import of bluefin tuna, whether or not the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless the Assistant Administrator waives the government validation requirement for that country following a recommendation to do so by the Executive Secretary of ICCAT. The Assistant Administrator shall furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Said list shall indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate Bluefin Statistical Documents for that country.

(b) *Exports.* The approved Bluefin Tuna Statistical Document accompanying any export of bluefin tuna from the United States must be validated by a U.S. government official, except under circumstances of waiver, if any, specified on the form and accompanying instructions, or in a letter to permitted dealers from the Regional Director. Such circumstances of waiver of government validation shall be consistent with ICCAT recommendations concerning validation of Bluefin Tuna Statistical Documents. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual tags affixed pursuant to § 280.52 or § 285.30 of this chapter, or;

(2) Validation by non-government officials authorized to do so by the Regional Director under paragraph (c) of this section.

(c) *Authorization for non-government validation.* Institutions, or associations seeking authorization to validate Bluefin Tuna Statistical Documents accompanying exports from the United States, must apply in writing to the Regional Director. A letter of application must indicate the procedures to be used for verification of information to

be validated, must list the names, addresses, and telephone/fax numbers of individuals to perform validation, and must provide an example of the stamp or seal to be applied to the Bluefin Tuna Statistical Document. Upon finding the institution or association capable of verifying the information required on the Bluefin Tuna Statistical Document, the Regional Director will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate Bluefin Tuna Statistical Documents accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for the Assistant Administrator to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate Bluefin Tuna Statistical Documents.

§ 285.204 Ports of entry.

The Assistant Administrator shall monitor the importation of bluefin tuna into the United States. If the Assistant Administrator determines that the diversity of handling practices at certain ports at which bluefin tuna is being imported into the United States allow for circumvention of the Bluefin Tuna Statistical Document requirement, he/she may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna may be imported into the United States. The Assistant Administrator shall announce in the FEDERAL REGISTER the names of ports so designated and the effective dates of entry restrictions.

§ 285.205 Prohibitions.

It is unlawful for any person to do any of the following:

(a) Import or attempt to import any bluefin tuna into the United States without an accompanying original form of an approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification and government validation.

(b) Import any bluefin tuna into the United States from a country that requires all such tuna to be tagged, without said tag accompanying the bluefin tuna.

(c) Remove a tag from any bluefin tuna imported into the United States accompanied by a tag, prior to its being cut into portions for a destination in the United States or for export.

(d) Fail to write legibly and indelibly the tag number and the issuing country on the outside of any package containing a part or parts of a bluefin tuna that was imported into the United States accompanied by said tag.

(e) Export or re-export from the United States any bluefin tuna without an accompanying original approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification and, if applicable, validated by a designated official of the United States government or an official of an institution authorized by the Regional Director pursuant to § 285.203(c) to validate such documents.

(f) Fail to provide in a timely manner any originals or copies of Bluefin Tuna Statistical Documents required to be submitted to the Regional Director pursuant to § 285.201.

(g) Write false information on or modify any information previously written on any Bluefin Tuna Statistical Document required by this subpart or to validate such document if not authorized to do so by the Regional Director.

(h) Fail to maintain copies of completed Bluefin Tuna Statistical Documents as required under § 285.201.

(i) Import any bluefin tuna in a manner inconsistent with any ports of entry designated by the Assistant Administrator pursuant to § 285.204.

(j) Reuse, or transfer to another dealer, any numbered Bluefin Tuna Statistical Document issued to a dealer under this subpart.

(k) Import any Atlantic bluefin tuna or Atlantic bluefin tuna products into the United States from Belize or Honduras after August 20, 1997 unless a validated Bluefin Statistical Document required under this subpart F, §§ 285.200 through 285.205, shows that a particular shipment of such bluefin tuna was exported prior to August 20, 1997.

(l) Import any Atlantic bluefin tuna or Atlantic bluefin tuna products into the United States from Panama after January 1, 1998, unless a validated Bluefin Statistical Document required

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under this subpart F, §§285.200 through 285.205, shows that a particular ship-

ment of such bluefin tuna was exported prior to January 1, 1998.

[60 FR 14388, Mar. 17, 1995, as amended at 62 FR 44423, Aug. 21, 1997]

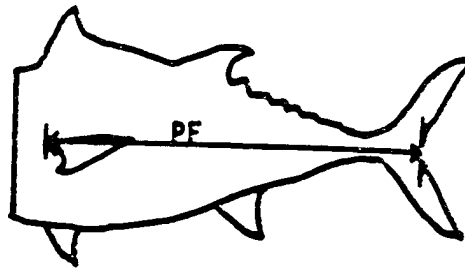


Figure 1. Pectoral fin to fork of tail measurement (PF).

[57 FR 374, Jan. 6, 1992]